

## II. The Need to go Forward

As a result of the failure of the negotiated rulemaking, the Commission now faces unenviable choices. With various participants clamoring to obtain access to the spectrum, the FCC must decide how to utilize the 28 GHz band. The Commission appears to have two options.

The FCC could impose an engineering solution on the band-sharing problem for all participants. However, the Commission could have done that prior to the negotiated rulemaking and did not so. Its failure demonstrates that the FCC, for whatever reason, is not interested in solving the problem by fiat (irrespective of how reasonable that fiat would be).

In the alternative, the Commission could proceed with further rulemaking in this docket to ascertain whether the 28 GHz band should be used by terrestrial or satellite services. The rulemaking would be used to determine whether the public benefits of terrestrial service outweigh those of satellite service or vice versa. The FCC then would have the record needed to properly allocate the spectrum in the public interest.

### III. The Public Interests at Stake in the Proceeding

The FCC's negotiated rulemaking was not designed to address the public interest benefits of LMDS versus satellite service. Nevertheless, a number of important factors were revealed during that procedure.

LMDS is an operational technology as demonstrated by the ongoing experimental license in New York. LMDS provides high quality competition to cable systems. More importantly, its cellular-like capabilities enable it to offer diverse service within the same metropolitan region.<sup>5</sup> This would enable small business owners to purchase targeted advertising time in narrow markets -- something they are incapable of doing with cable service and certainly not able to do with direct broadcast satellite. Thus, LMDS provides benefits to the public and the small business community not otherwise available through other multichannel video providers.

LMDS, due to its affordability enables a wide diversity of parties to participate in the multichannel telecommunications revolution. Small businesses could easily afford to offer LMDS service just as they can afford to build a similar service --

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<sup>5</sup> In New York, that may mean that service beamed to Chinatown would have Chinese language programming while that beamed to Brighton Beach would have Russian language programming.

multipoint multidistribution systems (wireless cable). The relative low-cost also would enable groups generally underrepresented in the ownership of mass media properties to obtain such properties.<sup>6</sup> If the FCC limits the 28 GHz band to FSS, the sheer cost of launching satellite services would put it beyond the reach of all but the most wealthy corporations in the United States.

LMDS can also be adapted for educational purposes in rural communities. Small rural communities may not have the access to resources to provide students with the variety of classroom instruction that larger communities have. Therefore, rural communities often utilize advanced telecommunication to bring teachers and students together. While fiber optic cable service can bring this so-called distant learning to schools, that service is expensive and may be beyond the financial reach of many rural areas. On the other hand, LMDS is a relatively inexpensive technology that can bring distant learning on multiple channels to rural classrooms. The capacity to bring distant learning to rural communities should not be overlooked by the Commission.

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<sup>6</sup> The Commission recently released a series of related notices of proposed rulemaking in which it seeks ways to increase the ownership of mass media properties by women and minorities.

On the other hand, one potential FSS user proposes a pie-in-the-sky project that may or may not get off the ground. Teledesic proposes to launch 840 low-earth orbiting satellites to provide voice and video signals in sparsely populated areas. The complexity and cost of the project would rival that of the Strategic Defense Initiative.<sup>7</sup>

The other primary opponent to shared utilization of the FSS spectrum is Hughes which has a direct interest in reducing competition in the multichannel video program delivery service. Hughes is a primary partner in a direct broadcast satellite (DBS) service. If other multichannel video providers enter the market with equivalent picture quality, offerings of local television stations, and avoidance of weather-related reception problems, it could hamper the ability of Hughes to recoup its centimillion dollar investment in DBS.

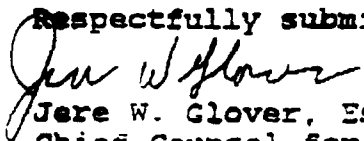
The Office of Advocacy believes that a thorough review of the public interest at stake in the 28 GHz band is necessary. The Office of Advocacy strongly urges the Commission to commence such a rulemaking as quickly as possible. The Office of Advocacy also recommends that the FCC, as part of this rulemaking, prepare an initial regulatory flexibility analysis which examines the costs and benefits of different uses for the 28 GHz. The Office

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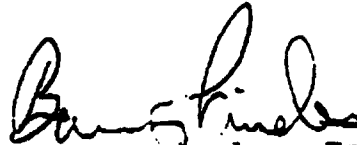
<sup>7</sup> Presumably NASA is chomping at the bit to be involved in the launch of nearly 840 satellites.

of Advocacy, although it does not wish to totally prejudice the outcome, believes that many more benefits arise from terrestrial use of the 28 GHz band or some mechanism for FSS to share service with terrestrial users.

Respectfully submitted,



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I, Owen J. McGovern, hereby certify that the foregoing "Reply Comments of CellularVision" were delivered by hand on April 13, 1995 to the following:

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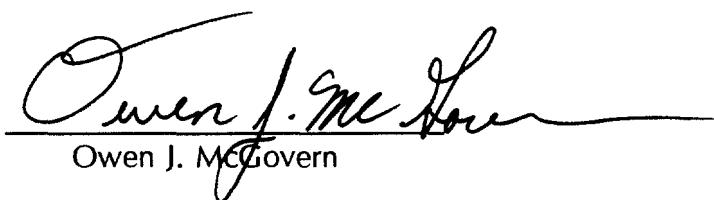
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